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STATE VS. CARPENTER & STEVENS

Memorandum of Law

There was inserted in the constitution of this State in 1844 a provision that in all criminal cases an accused is entitled to bail except in capital cases where the proof is evident or the presumption great. Similar provisions, have from time to time been inserted in the constitutions of many of our states. But those of the more prominent Eastern states like New York, Massachusetts and New Hampshire, have no such provisions.

The reasons leading out the insertion of this important safeguard to persons accused of crime are well known. Under the common law of England, the admission to bail of a person accused of a crime, was left entirely to the discretion of the judge, and history is replete with cases where, owing to pressure from the Crown or otherwise, this discretion had been seriously abused.

English cases or cases in other states where there is no such provision, or in New Jersey anterior to 1844, have therefore no significance. We are not here compelled to examine the question as to the application of the constitutional provision after indictment, for here no indictment has been found, although four years ago the subject was thoroughly investigated by the grand jury.

It is, however, perfectly well

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settled that in all cases previous to indictment, the court, upon proper application, will look into the depositions taken before the Committing Magistrate and, if necessary the proofs offered by the defense, and if the testimony proves no crime, the court will either discharge or bail. See

Ex parte Taylor, 5 Cow. 39

One of the reasons for this difference, where a defense is said to exist by some courts, between a case where there has been and has not been an indictment is the fact that th proofs before the grand jury are secret and not susceptible to being laid before the court on an application to be admitted to bail; and therefore, it is impossible to overcome the presumption arising from an indictment. See a very elaborate and able article attached to the case

In re Thomas, 39 Law. Rep. Anno. New Series, page 752 et seq.

It has been held by the many cases (some of which are quoted in the said note), that whenever the proofs adduced on an application of this character fail to show the guilt of the accused by proof that is evident and presumption great, he will be discharged from bail.

In

Ex parte McAnally, 53 Ala. 495,

(a state whose constitution has the provision, and where the question has frequently arisen) it was held if the proof is evident or the presumption great, if the evidence is clear and strong, the only well guarded and dispassionate judgment to the conclusion that the offence has been committed, that the accused is the guilty agent and tha

he probably would be punished capitally if the law is administered, that bail is not a matter of right.

In

Ex parte Acree, 63 Ala. 234

it was held that the accused was entitled to bail as a matter of right when the only evidence against him is circumstantial, unless it excludes to a moral certainty every reasonable hypothesis but that of his guilt.

In

Ex parte Richardson, 96 Ala. 110 (11 So. Rep. 316)

it was held that the rule requiring admission to bail applies where the evidence on the part of the people tends to show that the accused is guilty as charged, and the evidence on the part of the accused tends to show an alibi.

In

Exparte Nathan (Fla.) 50 So. Rep. 38

it was held that where the testimony is of less probative force than is necessary under the circumstances of the case to show evident guilt or a great presumption of guilt of a capital offense, the accused is entitled to bail. Where the proofs establish only a probability of guilt, bail should be allowed.

In

McCoy vs. the State, 25 Tex. 33,

The Court said:

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"The terms, 'proof is evident or presumption great' are as definite to the legal mind as any words of explanation can make them; and are intended to indicate the same degree of certainity whether the evidence is direct or circumstantial. The design is to secure the right of bail in all cases except in thos in which the facts may show with reasonable certainty that the prisoner is guilty of a capital offense."

In

Ex parte Evers, 13 Southwestern Rep. 343

the same court, speaking of the provisions, sais:

"If, upon the sole testimony adduced, the court or judge entertains a reasonable doubt whether the relator committed the act, and whether in doing so he was guilty of a capital crime, bail should be granted."

In

Ex parte Locklin, 72 Southwestern Rep. 585

the testimony of accomplices made out a case against the accused of cold-blodded murder, but the evidence corroborating them was circumstantial, consisting of declarations of conduct of the accused, the proof of the prisoner's connection with the crime not being absolutely clear and conclusive, beyond reasonable doubt. It was held be was entitled to bail.

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See also

Ex parte Heffren, 27 Ind Rep. 87.

There A was indicted for the murder of B and applied to be admitted to bail. The evidence showed that A shot B with a pistol in a whiskey saloon in the presence of the father and brother of the deceased, who, with the deceased and the prisoner, were the only persons in the saloon. The prisoner was uninjured when he entered the saloon and when he came out, he had two pistol shots in his head. Five shots were heard in the saloon, of which the prisoner fired four only. As he ran out of the saloon a hort was fired at him by someone in the saloon. The father and brother of the deceased swore that the shooting was all done by the prisoner, that no shots were fired at him, and that the homocide was without provocation. It was held that the case made by the evidence, was not one in which the proof of guilt was evident, and that the prisoner was entitled to be admitted to bail. The lower court refused to discharge the prisoner on bail. An appeal was taken and argued by Hon. D. W. Voorhees and others, and the action in the lower court was reversed. The opinion says:

> "Dispassionately weigh ing this evidence, and assuming that the manner and bearing of the Johnsons as witnesses was such as to justify the opinion that they meant to tell the truth, yet how can it be said that 'the proof is evident?' Who shot the prisoner? The Johnsons only had the opportunity to do it. The two survivors swear that they did not, and that the deceased did not. But the fact is stubborn and patent that it was done in the saloon, if human testimony can be relied on at all. May

not the surviving Johnsons be mistaken as to what the deceased did? They are mistaken about something, for in that saloon, at that time, the prisoner received the two balls in his head, and yet they did not see them fired. Is it 'evident' that the deceased did not first fire at the prisoner? Are not there strong doubts about his guilt of murder? These questions are not difficult to answer. The case shown by the evidence, giving the surviving Johnsons the utmost credit for veracity, as the court below must have done, and yet allowing the other undisputed facts to have any weight whatever, is one, in our judgment, in which the proof is not evident.

"The prisoner is, therefore, entitled to be let to bail, by a plain provision of the constitution of the State."

In

6 Corpus Juris 956, Sec. 172

we find:

"Sufficiency of Proof in General. Just what probative force evidence must have in order to bring the case within the exceptions mentioned in the constitutions and to exclude bail has been the subject of much judicial discussion. The character and extent of the proof to make t the necessary sufficiency depend largely upon the circumstances of each case; and the rule most generally adopted has been to refuse bail in all cases in which the trial court would sustain a capital conviction if it was pronounced by a jury on such evidence of guilt as was exhibited to the court on the hearing of the application for bail. This rule, however, is not always strictly followed, for the rule has been otherwise stated that bail should be allowed where, upon a consideration of the whole evidence, a reasonable or well founded doubt of the accused's guilt exists or can be entertained; or that bail should be refused unless, a reasonable doubt of the accused's guilt of a capital offense is shown or there are exceptional circumstances justifying bail; and that, even though there is a reasonable doubt as to the guilt of the accused, if upon an examination of the entire record the presumption is great that the accused is guilty of a capital offense, bail should be refused.

"The tendency of the courts has been toward a fair and liberal construction rather than otherwise of the law in determining what degree of proof or conclusiveness of presumption is sufficient to justify a denial of bail. This is evident not only from various expressions used in the decisions, many of which do not go to the extent of the general rule above stated, but also from a consideration of the facts upon which the courts have refused to allow bail."

In

5 Cyc. p. 64

under the caption, "Nature and Degree of Proof," we find:

"As a general rule, bail should be denied whenever the trial court would sustain a verdict of conviction for a capital offense, if rendered on the same evidence given on the application for bail. But this rule is not strictly followed, for it is declared that, under the liberal principles of the constitution, and the laws relating to bail, an application therefor will be allowed even in a case where the jury might and perhaps ought upon the same evidence to render a verdict of guilty of murder. In addition, the tendency of the courts has been rather toward a fair and liberal construction than otherwise of the law, in determining what degree of proof or conclusiveness of presumption is sufficient to justify a denial of bail. This is evident, not only from the various expressions used in the decisions, many of which do not go to the extent of the general rule above stated, but also from a consideration of the facts upon which the courts have refused to allow bail. Again, it has been declared that the constitutional clause 'where the proof is evident or presumption great' indicates the same degree of certainty whether the evidence is direct or circumstantial; the design being to secure the right to bail in all cases except those in which the facts show with reasonable certainty that the prisoner is guilty of a capital offense. Following out, therefore, these last-mentioned principles and applying the evident intent of the law-makers, and of the fundamental law to the facts, the courts hav in many cases allowed bail under what in their discretion seemed justifying circumstances."